

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENTS UNIT

In the Matter of the Petition for the
Detachment of Certain Land from the
City of Erskine D-488 Pursuant to
Minnesota Statute, 414.06

**FINDINGS OF FACT,
CONCLUSIONS
AND DECISION**

The above-entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause at 9:00 a.m. on June, 25 2012, at Erskine City Hall, 105 Ross Avenue, Erskine Minnesota. The record closed on the same day. At the hearing, Exhibits A-L and 1-13 were accepted as evidence.

Matthew Rust, Rust, Stock, Rasmusson & Knutson, P.A., appeared on behalf of Kevin Crocker, Petitioner. Stephanie Harbott, Odland, Fitzgerald, Reynolds and Harbott, PLLP, appeared on behalf of the City of Erskine (the City).

The following witnesses testified at the hearing: Kevin Crocker, Petitioner; Sharon Kotrba, City Clerk/Treasurer for the City of Erskine; John Rakowski, Knute Township Supervisor.

STATEMENT OF THE ISSUES

The issue in this proceeding is whether the Petition for Detachment should be granted based on the factors set forth in Minn. Stat. § 414.06.

The ALJ finds that the Petition should be granted.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 5, 2012, Petitioner filed a Petition for Detachment of property from the City. The Petition, filed by the property owner, seeks to detach approximately 45 acres from the City pursuant to Minn. Stat. § 414.06.¹

¹ Petition Ex. A.

2. The property proposed for detachment (Subject Area) is described as: Government Lots Four (4) and Five (5) Section (4) Township One Hundred Forty-eight (148) North, Range Forty-two (42) West of the 5th Principal Meridian. The City and all the Subject Area are within Polk County.²

3. There are 45 acres and one (1) property owner within the Subject Area. The property owner of the Subject Area signed the Petition to Detach.³

4. The Subject Area is currently located within the municipal boundaries of the City.⁴ The Knute Township borders the current west boundary of the City. If the Subject Area is detached it will be a part of Knute Township.⁵

5. The Subject Area abuts the municipal boundary of the City.⁶ The northeast corner of the Subject Area is connected to the City by only one other property in the City. The Subject Area is bordered to the east, west, and south by lakes and by Badger Township to the north.⁷

6. The City is not currently symmetrical. The bulk of the City land is in a rectangle with the Subject Area in the northwest corner. The City, however, used bonded indebtedness to purchase 68 acres of land in Knute Township for development purposes. Development is anticipated 5 to 15 years out.⁸ This parcel (the Development Island) was annexed but is not connected to the rest of the City. It lies significantly east of the remainder of the City along highway U.S. 2.⁹ There is also a protruding section of the City north of U.S. 2 to County Highway 35/ 343 St. S.E.¹⁰

7. The additional bonded indebtedness from the purchase of the Development Island does not impose a hardship on the finances of the City.¹¹

8. The City has no zoning ordinance.¹²

9. The Subject Area is rural in nature and zoned agricultural pursuant to the Polk County Zoning Ordinance.¹³

² Statement of Stipulated Facts and Ex. A.

³ Petition, Exs. A and 12.

⁴ Ex. B.

⁵ Statement of Stipulated Facts.

⁶ *Id.*

⁷ Exs. 13 and 3.

⁸ Testimony of Sharon Kotrba.

⁹ Ex. 3, Test. of Kevin Crocker and S. Kotrba.

¹⁰ Ex. 3.

¹¹ Test. of S. Kotrba.

¹² Statement of Stipulated Facts.

¹³ *Id.*

10. There are two (2) residences on the Subject Area; one occupied by the Petitioner and the second is a mobile home owned by the Petitioner but occasionally rented.¹⁴

11. The balance of the Subject Area is undeveloped meadow, woodland, and swamp land.¹⁵

12. There is no urban residential, commercial or industrial development on the Subject Area other than the two residences referenced above.¹⁶ Petitioner has no plans to develop the Subject Area for any use beyond those currently existing.¹⁷

13. The City does not provide sewer or water to the Subject Area. The nearest sewer and water connections are capped on Park Street at the end of the platted City property.¹⁸ Petitioner requested sewer and water service from the City, but the City denied his request due to high costs.¹⁹

14. Sewer and water have been extended beyond the City boundary for several miles to the east and north to allow for the building of a school and for development in the Development Island.²⁰

15. Park Street is the main access road to the Subject Area.²¹ Improvements to Park Street have been made by the City from time to time. The City also maintains Park Street by snowplowing and grading.²² Park Street, however, does not extend to the Subject Area. The intervening stretch of road between the end of Park Street and the Petitioner's driveway is not maintained or owned by the City. Petitioner must plow and grade the intervening portion of the road.²³

16. Although the City maintains Park Street up to its intersection with U.S. 2, it only owns Park Street up to the end of the last platted parcels at a point well before the intersection with U.S. 2.²⁴

17. At the Petitioner's request, a culvert was added by the City to the section of road between the end of Park Street and the beginning of Petitioner's driveway.²⁵

¹⁴ *Id.*, Test. of K. Crocker.

¹⁵ Statement of Stipulated Facts, Ex. 10.

¹⁶ *Id.*, Test. of K. Crocker.

¹⁷ Test. of K. Crocker.

¹⁸ Test. of K. Crocker and S. Kotrba.

¹⁹ Ex. 4

²⁰ Test. of S. Kotrba.

²¹ Test. of K. Crocker.

²² Test. of S. Kotrba.

²³ Test. of S. Kotrba and K. Crocker.

²⁴ Test. of S. Kotrba, Exs. 6, 8, and 9.

²⁵ Ex. K and L.

18. The residences on the Subject Area have private sewers and are serviced by a private well.²⁶

19. Electrical power is provided to the Subject Area by Wild Rice Electric, Mahnomon, MN.²⁷

20. Ottertail Power owns the City franchise for providing electric power to the City.²⁸ Ottertail Power was unable to obtain an easement to the Subject Area for the purpose of bringing in power lines because the City does not own Park Street all the way to the Subject Area's driveway. The intervening stretch of road is owned by a private party who would not grant an easement.²⁹

21. The City currently provides fire protection to the Subject Area. A Mutual Aid Agreement for fire protection exists between Knute Township and the City.³⁰ The City would still provide fire protection to the Subject Area, if it were to detach.³¹ Knute Township does not anticipate any significant cost increase in its share of the Mutual Aid Agreement should the Subject Area be detached.³² Police protection is provided by Polk County for the City and for Knute Township.³³

22. The 1990 population of the City was 423. In 2000, the population was 437. The population in 2010 was 503.³⁴

23. The Petitioner requested a resolution of the City seeking to detach the Subject Area. The request was denied.³⁵

24. The approved City budget for 2011 was \$308,134.³⁶

25. The real estate tax payable in 2011 on the Subject Area attributable to the City was \$1,113.19.³⁷ The City's share of property taxes deriving from the Subject Area amounts to approximately one-third of one percent of the City budget.³⁸

26. The City has no plans to develop the Subject Area for urban residential, commercial or industrial purposes. Future development of the City is anticipated to the east, on the opposite side of town from the Subject Area.³⁹

²⁶ Statement of Stipulated Facts.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Test of K. Crocker and S. Kotrba.

³⁰ Ex. I.

³¹ Statement of Stipulated Facts.

³² Test. of John Rakowski.

³³ Test. of S. Kotrba.

³⁴ Statement of Stipulated Facts.

³⁵ Ex. 2

³⁶ Statement of Stipulated Facts and Ex. 11.

³⁷ *Id.* and Ex. 7.

³⁸ Test. of S. Kotrba.

³⁹ Test. of K. Crocker and S. Kotrba.

27. The City opposed the Petition for Detachment because it believes that if the detachment is approved it may set a precedent for six additional property owners within city limits, who are not receiving city utilities, to file a petition for detachment as well. This would cause a greater change to the physical integrity of the city limits and reduce general property tax revenue.⁴⁰

28. The City believes that detachment of the Subject Area will change the physical integrity of the City limits by creating a notch in the otherwise rectangular shape.⁴¹

29. Knute Township has taken no position on the merits of this detachment petition but would accept the Subject Area if detached.⁴²

30. Development of the Subject Area is unlikely due to the lack of access to sewer, water, City electric power or to City maintained streets. In addition, the topography of the Subject Area is to an extent low, swampy and marshy.⁴³

31. Notice of the hearing on the detachment petition was duly published in the *Erskine Echo* on May 31, 2012 and again on June 7, 2012.⁴⁴

32. The parties agreed to divide the costs of this proceeding equally between the City and the Petitioner.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. This matter is properly before the Minnesota Municipal Boundary Adjustment Unit (MBAU) and the Administrative Law Judge pursuant to Minn. Stat. § 414.06.

2. Proper notice has been given in this matter.

3. Petitioner has the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.

4. The chief administrative law judge may order a detachment on finding that the requisite number of property owners have signed the petition if initiated by the property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for

⁴⁰ Ex. J and Test. of S. Kotrba.

⁴¹ *Id.*

⁴² Test. of J. Rakowski.

⁴³ Test. of K. Crocker.

⁴⁴ Affidavit of publication in file.

reasonably anticipated future development. The chief administrative law judge may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.⁴⁵

5. There is only one owner of the property in question and that owner signed the petition thereby fulfilling the first requirement for a detachment.

6. The Subject Area is rural in character and not developed for urban residential, commercial or industrial use, thereby fulfilling the second requirement for detachment.

7. The Subject Area is within the boundaries of the City and abuts a boundary, thereby fulfilling the third requirement for detachment.

8. Detachment of the Subject Area from the City would not unreasonably affect the symmetry of the City, thereby fulfilling the fourth requirement for detachment.

9. The Subject Area is not needed for reasonably anticipated future development, thereby fulfilling the fifth requirement for detachment.

10. Detachment of the Subject Area from the City would not prevent the City from continuing to carry on the functions of government without undue hardship.

11. The petition for detachment has met all the criteria for approval.

12. Any conclusion more properly denominated as a finding is adopted as such.

Based on these conclusions and for the reasons explained in the accompanying memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The Petition for the Detachment of the Subject Area from the City of Erskine is **GRANTED**.
2. The Municipal Boundary Adjustments Unit shall cause copies of this Order to be mailed to all persons described in Minn. Stat. § 414.09, subd. 2.
3. Pursuant to Minn. Stat. § 414.12, subd.3, the cost of these proceedings shall be divided as follows; to the City, 50 percent and to Petitioners, 50 percent.

⁴⁵ Minn. Stat. §414.06, subd. 3.

4. This Order becomes effective November 7, 2012.

Dated: July 13, 2012

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Digitally recorded

NOTICE

This Order is the final administrative order in this case under Minn. Stat. §§ 414.06, 414.07, 414.09, and 414.12. Pursuant to Minn. Stat. § 414.07, subd. 3, any person aggrieved by this Order may appeal to Polk County District Court by filing an Application for Review with the Court Administrator within 30 days of this Order. An appeal does not stay the effect of this Order.

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions and Order within seven days from the date of the mailing of the Order pursuant to Minn. R. 6000.3100. However, no request for amendment shall extend the time of appeal from this Order.

MEMORANDUM

The parties have stipulated to facts that fulfill the first three requirements of Minn. Stat. § 414.06 for detachment. Argument is essentially limited to whether detachment would unreasonably affect the symmetry of the City; whether detachment would pose an undue hardship on continuing to provide services as a City and; whether the land is needed for reasonably anticipated future development. In addition, the City raises a concern that does not appear in the statute, that being, if this detachment is approved, others will want to detach as well.

Symmetry

The statute requires the ALJ to consider whether the proposed detachment would unreasonably affect the symmetry of a municipality. The City of Erskine is not symmetrical. Although it largely represents a rectangle, there is a protrusion to the east above Highway U.S. 2. More significantly, the City purchased and annexed land in Knute Township that is not in any way connected to the City. It is an island of City property that lies to the east of the City and is completely surrounded by Knute Township. If the City is concerned about symmetry, the voluntary purchase and annexation of this land certainly does more to affect the symmetry than taking a notch out of the northwest corner.

Even if one ignores the Development Island and the protrusion in the northeast boundary, detachment of the Subject Area does not *unreasonably* affect the symmetry

of the City boundary. The Subject Area is only slightly attached to the City. Most of the land is surrounded by lakes, highway, or other townships. It is only connected to the City by way of one neighbor to the northeast. Even that connection is tenuous since the City does not even own the road connecting the Subject Area with the neighbor. The statute does not prohibit any asymmetrical change. It only requires that the change be not unreasonable. In this case, the symmetry has already been disturbed by the City of its own volition. This “notching” of the corner is not unreasonable in light of the compelling reasons for detachment.

Furthermore, there will be no negative effects because of this slight departure from symmetry. Delivery of City services will not be hampered because there are no services being provided. Detachment would not create any “islands” or “balloon and string” configurations. Nor will detachment add any new expense to the City government.

Undue Hardship

The loss of property tax revenue to the City is \$1,113.19 or one-third of one percent of the approved City budget. While the loss of any revenue is problematic in this era of tight budgets, the size of this loss will not prevent the City from carrying on any of its projected spending. No evidence was presented that demonstrated any fiscal hardship would occur as a result of detachment. Indeed, the testimony of the City Clerk/Treasurer was that the increase in interest costs for the purchase of the Development Island was not a burden for the City finances. We have only a conclusory statement that the loss would create an undue hardship.

Future Development

The City has no plans to develop the Subject Area in the foreseeable future. The owner has no plans to develop the land either. Without sewer and water, any development would be problematic. The City bought land in Knute Township, east of the rest of the City for the purpose of future development. That land is not yet fully developed and represents the anticipated future development needs of the City. The City took on the expense of extending sewer and water lines beyond the City limits in this direction with the express purpose of encouraging development to the east rather than to the north and west where the Subject Area lies. The evidence does not support a conclusion that this property is needed for reasonably anticipated future development.

Copycat Petitions

The City argues that if this detachment is approved, other property owners within the City will follow suit. Currently, there are no other petitions for detachment pending with the MBAU. In any case, that is not one of the statutory criteria for consideration and is not a statutory reason for denying the petition. The ALJ cannot deny a petition that meets all the statutory requirements on the speculation that others might be encouraged to also file petitions. The statute makes no judgment about possible future petitions. If others are filed, they will be measured against the statutory criteria and

judged on their merits. While this may be a legitimate concern of the City officials, it is not a basis for denial of a petition that meets the requirements of statute.

This petition meets the statutory requirements and is, therefore, approved.

R. R. K.